IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/10/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. THANIKACHALAM

W.A. No. 2596 of 2003
and W.A.Nos. 2934 and 2738, of 2003
and
WAMPs 4644, 4013 and 4273 of 2003
AND
W.P. Nos.25066, 24977, 25397, 25398, 25425
25426, 25723, 24267, 25816, 24505 and 24702 of 2003
and
WPMPs 30832, 30833. 30720, 31676, 31200,
31230, 30136, 31581, 30384 of 2003

W.A. No.2596 OF 2003:

Minor S.V. Bratheep
rep. by his father and
natural guardian S. Subash
Ganapathipuram
Kanyakumari District ..... Appellant

-Vs-

1. The State of Tamilnadu
rep. by its Secretary to Government
Higher Secondary Education
Chennai 600 009

2. The Secretary
Tamil Nadu Engineering Admissions 2003
Anna University
Chennai 600 025

3. The Director of Technical Education
Guindy, Chennai 600 025

4. The Anna University
rep. by its Registrar
Chennai 600 025

5. The All India Council for

Technical Education, rep. by its
Chairman, Indira Gandhi Sports Complex
New Delhi 110 002 ..... Respondents

Appeal under Cl.15 of the Letters Patent against the order
dated 11-08-2003 made in W.P. No.17532 of 2003

!For Appellant/Petitioner :: M/s. R. Krishnamurthy and
(Managements of Engineering K. Doraisamy, Senior Counsel
Insitutions and students) for M/s. V. Ayyadurai,
M/s. V. Ayyadurai, Motilal
and Muthumani Doraisamy
M/s. R. Sureshkumar,

R. Natarajan,
S. Thankasivam and
S. Prabhakar

^For Respondents :: Mr. V.R. Rajasekar
Spl. Government Pleader
(for R1 to R3)
Mr. G. Masilamani, Senior
Counsel for G.A. Mani Assct.
for R4
Mr. Vijay Narayanan for R5

:COMMON JUDGMENT

(Delivered by V.S.SIRPURKAR, J.)
The writ appeals mentioned above will be disposed of by this common order since the subject was common. Few writ petitions also came to be filed by various Engineering Colleges in the State regarding the subject and they came to be tagged to the present writ appeals.

2. The common subject involved is the validity of Government Order, G.O. Ms. No.25, dated 13-2-2003, which emanates from G.O. Ms. No.22 2 Higher Education (J1) Department, dated 29-6-2000. These two Government Orders, issued by the Government of Tamil Nadu, pertained to the minimum qualifying marks required by the students of the Open Category (OCs), Backward Communities (BC), Most Backward Communities (MBCs) and De-notified Communities (DNCs).

3. In G.O. Ms. No.222, on the request of the Tamil Nadu Selffinancing Engineering Colleges' Association, it was provided that for the admission in an Engineering college, a student must have secured the marks as per the table given below:

BASIC QUALIFICATION
Community Higher Secondary (Academic/Higher

Secondary(Vocational)/Diploma Holders

O.C. 60% average in the related subjects
B.C. 55% average in the related subjects
MBC/DNC 50% average in the related subjects
SC/ST Mere pass
It will be seen from the language of the said Government Order that the said request was made by the Engineering Colleges' Association as there were vacancies remaining under 'Payment Quota' and the number was increasing year after year, putting the Managements of the Engineering Colleges under great financial difficulties. The percentages of qualifying marks for students belonging to different communities arrived at by the Government in G.O. No.222 were lowered down and that is an admitted position.

4. It seems that after that Government Order came the celebrated judgment of the Supreme Court T.M.A. PAI FOUNDATION v. STATE OF KARNATAKA (1995 (5) SCC 220). Relying on the contents of paragraphs 66 and 70 and more particularly on the answer given to the question No.4 framed therein, the State Government reiterated this aforementioned Government Order in G.O. No.25. It was noted by the State Government that according to the law declared by the Supreme Court, the State had to ensure the educational standards and maintenance of excellence thereof and though the Managements of the unaided professional institutions, in the meeting held by the Government on 3-2-2003, had made a request to prescribe a "mere pass" at +2 level (Higher Secondary Examinations) as the minimum eligibility for admission to the professional institutions from the year 2003-04 as had been prescribed by the All India Council for Technical Education ('AICTE' in short), the Government did not see any reason to change the existing norms as provided by G.O. No.222. With the result, when the Government found from the lists supplied to it by the unaided professional institutions that some of the students, as per their categories, secured less percentage of marks than the prescribed qualifying marks. The Government had threatened to cancel the admissions of those students and the Anna University, to which all the Engineering colleges in the State are affiliated had also threatened to withdraw the affiliation granted by it earlier. It is with this idea that the present writ petitions came to be filed before the learned single Judge.

5. The first such writ petitions were W.P. Nos.17532 and 21451 of 2003. In these writ petitions, the aforementioned two Government Orders came to be assailed on the ground that the said Government Orders and more particularly the second one were unconstitutional as being contrary to the norms fixed by the AICTE, which was a body created under the All India Council for Technical Education Act, 1987 (in short 'AICTE Act'). The norms by the AICTE were brought into existence in exercise of the powers conferred by clauses (j) and (o) of Sec.10 read with Sec.23 of the AICTE Act. The said norms were also reflected in an advertisement floated by the AICTE dated 2-11-2002, which was very heavily relied upon by the learned single Judge.

6. It was contended before the learned single Judge that though the petitioners or, as the case may be, the students of the Engineering colleges, satisfied the norms, they were being denied the seats on untenable

grounds. It was also pointed out that this year, there was a unique situation like the earlier years also that a large number of seats remained vacant, as they were not claimed even by the students who were offered those seats. It was, therefore, urged that when there were more number of seats then the claimants, the Government had no power to fix the norms contrary to or different from the norms fixed by AICTE.

7. It must be noted before we proceed with the matters for further considerations that a number of writ petitions have been filed, either by the Managements of the Engineering colleges or by the students, reiterating that the norms adopted by the State Government could not be contradictory to and different from the norms fixed by the AICTE. A relief, therefore, was sought from this Court for a declaration that the norms insisted upon by the State Government were invalid more particularly in view of the fact that there were a large number of lapsed seats even under the Single Window System (SWS) by which the Government seats were filled in. It will be, therefore, proper to see the prevalent system of admissions to the professional courses more particularly Engineering stream in the State of Tamil Nadu for the year 2003.

8. From the application form for Tamilnadu Engineering Admissions, 2003, which also included an Information Booklet, it is apparent that the application form was intended for the admissions to the Anna University, Government, Government Aided and Self-financing Engineering Colleges under the unified Single Window Admission System. Clause 2 .7 provides that all candidates seeking admissions to the Engineering colleges should have appeared for TNPCEE'03 conducted by the Anna University in the subjects Mathematics and Physical Sciences or in the related subjects. It is specified therein that the applications without the entry of TNPCEE'03 registration number would be rejected. It is an admitted position that this common entrance test took place in Tamil Nadu even before the declaration of the results of the qualifying examination, i.e. HSC Examination of 10+2 curriculum. Clause 2.4 suggests the minimum eligible marks, which we have quoted in the earlier part of the judgment. It is also an admitted position that the applications of the students, who had secured the minimum eligible marks in the Higher Secondary Examinations, the results of which declared later on after the declaration of the results of the TNPCEE'03 alone were accepted. Thus, those students who had appeared for the TNPCEE'03 but had failed to secure the minimum qualifying marks in the Higher Secondary Examinations were not considered and were not even allowed to apply for the Engineering seats. It is also an admitted position that the candidates, out of 600 marks in the three subjects, viz. Mathematics, Physics and Chemistry, had to secure a minimum marks of 60% on an average, i.e. 360 marks in all in the said three subjects for the purpose of admissions into the Engineering colleges. The total marks secured by a candidate out of 600 marks would be then converted into the score as if it was out of 200 marks and that score

would be added to the marks secured by the candidate in TNPCEE'03. Thus the standardized score arrived at would fix the place of the concerned student in the final merit list.

9. It has come on record by way of affidavits that in all 51660 applications

were received for the admissions through Single Window System. Out of them, 50788 were found to be eligible. The total number of seats offered was 24801 and 11072 students attended the interview but, refused to take the seats offered. In all, 48434 seats were filled up including 24801 seats, which were filled in under Single Window System. The rest were, of course, filled in by the Managements from their allotted quota. It is thus apparent that in all 28850 seats were remained vacant after filling in of all the students firstly through Single Window System and secondly by the Managements from their quota. What is being pressed into service before us is that if the norms fixed by the State Government are brought on par with the norms fixed by the AICTE then, the number of students who were otherwise refused to take part in the selection procedure would be able to get an opportunity and there will be no question of any Engineering institution having any apprehension of disaffiliation because of some admissions made by them of the students who have been otherwise not having the eligibility norms set up by the State Government.

10. The learned single Judge took the view, relying on the various observations made in T.M. Pai case, cited supra, that the State Government was within its rights to fix the norms that it did and that it had done so to maintain the educational standards and ensure academic excellence. While concluding, however, the learned Judge recommended:
"It is brought to the notice of this Court that 1/4th of seats are unfilled and some of the unaided Engineering colleges are facing the threat of closure and if the minimum marks prescribed by AICTE is followed, the remaining seats could be utilised and the institution be saved from closure. The Government is at liberty to take a decision considering the total numbers unfilled seats and demand for the same from the candidates who satisfy the conditions prescribed by AICTE in respect of minimum qualification and pass orders at the earliest to avoid the perils of lapse of seats and closure of the institutions."

11. M/s. R. Krishnamurthy and Doraisamy, learned senior counsel appearing on behalf of the appellants/petitioners, supported by the other learned counsel, have assailed the order as well as the aforementioned Government Orders on the ground that firstly, the said Government Orders themselves were invalid being contrary to the norms fixed by the AICTE and that the norms fixed by the AICTE could not be varied or contradicted to the detriment of the students.

12. Both the learned senior counsel pointed out that the observations in T.M. Pai case, cited supra, on which the learned single Judge had relied on, did not necessarily spell out a right in favour of the State Government to fix the norms contrary to those fixed by the AICTE. In that behalf, it was pointed out that the law laid down by the Supreme Court in STATE OF TAMIL NADU v. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUTE (1995 (4) SCC 104) was not adverted to by the learned Judge. In particular, the learned counsel heavily relied on the declaration of law in paragraph 40 of the said judgment. Learned counsel further urged that the law laid down in Adhiyaman case, cited supra, was not in any manner varied or watered down in T.M. Pai case, cited supra or even for that matter, in the case of ISLAMIC ACADEMY OF EDUCATION AND ANOTHER v.

STATE OF KARNATAKA (2003 (6) SCALE 325), which was an exercise taken by the Apex Court to clarify the judgment in T.M. Pai case, cited supra. What was pointed out was that the State Government could insist on higher norms than the AICTE's norms only if there were more number of applicants and less number of seats available but not in a situation where the applicants were less and the seats were more. It was pointed out that there were in all 71000 seats (approximately) available and out of these half of the seats alone were to be filled in under Single Window System of Admission and the rest were to be filled in by the Management of the engineering institutions as per the law laid down in T.M. Pai case, which they actually did. Stretching the argument further, learned counsel pointed out that the norms fixed by the State could at the most be made applicable to the seats which were to be filed in under Single Window System but there was nothing to suggest that the State could provide for the minimum eligibility norms in respect of even the remaining seats over which the State had no control. It is then pointed that apart from the fact that the norms fixed by the State were contrary to the AICTE' s norms, the State had also completely misinterpreted the provisions of the AICTE Act.

13. Initially AICTE was not a party to the writ petitions. At the stage of the appeal, AICTE was added as a party and its' stand was informed regarding the actual norms of AICTE.

14. Shri Vijay Narayan, learned counsel appearing on behalf of AICTE, invited our attention to the counter-affidavit filed by AICTE wherein it is pointed out that by G.S.R.320 dated 11-7-1992, in exercise of the powers conferred by Sec.23(1) of AICTE Act as well as sec.10(o), the AICTE had prescribed the guidelines for admissions to Engineering Degree and Engineering Diploma programmes. The relevant guidelines provided as under:
"1.1. Qualification for Admission of General Category Students:
The minimum qualification for admission to degree programmes in Engineering should be a pass in the 10+2 (Senior Secondary) Examination with a minimum aggregate of 60 per cent marks in Physics, Chemistry and Mathematics obtained in a single sitting. The duration of degree programme in Engineering will be 4 years after 12th standard. This will apply to cases where admissions are based on the marks in the qualifying examination and not on the basis of entrance tests.
... ...
"1.3. Entrance Tests
All States/Union territories (UTs) should conduct entrance tests in the subjects of Physics, Chemistry and Mathematics at 12 + level. The entrance test should be common to all Engineering degree institutions in the State/UTs. The minimum marks for eligibility for the entrance test need not be prescribed in the case of degree courses and all students who have passed the qualifying examination may be permitted to appear in the entrance test. Only the merit ranking in the entrance test should be the basis for admission to engineering degree programmes. Such tests should be conducted by appropriate agencies set up for the purpose."

It is then reiterated by the learned counsel that these guidelines have not been superseded by any subsequent guidelines or regulations by AICTE. From

this, learned counsel urges that AICTE visualized two categories of students, viz.
(i)Those who sought admission on the basis of the marks secured in the qualifying examinations only; and
(ii)Those who sought admission on the basis of the marks secured by them in the Common Entrance Test held by the State/UTs.
While in the first category, it was must for a student to secure the minimum aggregate of 60 per cent marks in Physics, Chemistry and Mathematics in a single sitting, in so far as the second category was concerned that was not necessary and the marks secured in the entrance test would alone matter for the admission. In short, according to the learned counsel, the position which is obtained is that if the student appears for the entrance test and seeks the admission on the basis of the marks scored therein, it would not matter if he had not scored the minimum aggregate of 60 per cent marks in the said three subjects in the 10+2 Examinations.

15. Learned counsel also invited our attention to the observations in paragraphs 13, 15, 16, 19 in Islamic Academy of Education case, cited supra. In the said decision, the Supreme Court has answered the questions 3 and 4 posed by itself. The questions were:
"3) Whether private unaided professional colleges are entitled to fill in their seats to the extent of 100%, and it not to what extent; and
4) Whether private unaided professional colleges are entitled to admit students by evolving their own method of admissions."
Learned counsel points out that in the aforementioned paragraphs, the Supreme Court had pointed out that in case of non-minority professional colleges also, the admission can only be on the basis of merit in the common entrance test conducted by the Government agencies. The Supreme Court further reiterated that in case of minority institutions, a preference could be given to the students of that community over and above the other communities of students. However, their inter se merit would have all the same to be considered and if the students belonging to that particular community do not fill up the seats, for which the institution was meant, the students of other communities could be admitted only on the basis of merit. It is also reiterated by the Supreme Court that the minority and non-minority professional colleges could select their students under Management Quota either on the basis of the Common Entrance Test conducted by the State or on the basis of the Entrance Test to be conducted by the association of colleges of particular type in that State. However, the option to hold the Common Entrance Test by the Association of Professional institutions would have to be exercised by such institutions before issuing of prospectus and after intimating to the concerned authority and the Committee, which was directed to be set up by the Supreme Court. Lastly, the Supreme Court reiterated for the formation of a Committee and also directed the details of such a formation. Learned counsel took the stand that since no other method of admission was contemplated, the petitioners/appellants were not entitled to any relief.

16. Shri Rajasekaran, learned Special Government Pleader, pointed out that the Government had not in any manner diluted the standards set up by the AICTE. On the other hand, the Government has every right to heighten the standards and for that purpose provide for the higher norms.

Learned counsel very heavily relied on the observations in T.M. Pai case, cited supra, and also tried to distinguish the decision in Adhiyaman case, cites supra, by suggesting that the question which fell for consideration in Adhiyaman case, cited supra, was not a relevant question here and that the Supreme Court had made the observations in an entirely different context.

17. Shri G. Masilamani, learned senior counsel appearing on behalf of the Anna University, took the stand that it was proper to insist on a higher score in the Higher Secondary Examinations as, according to learned counsel, that provide a good platform to keep the students under check. Learned counsel was at pains to point out that if these norms were not prescribed then, the students will tend to behave in an uncontrolled and untrammelled manner and would not be amenable to the school or college discipline at all. Learned counsel, therefore, supported the Government Orders.

18. It will be for us now, on this backdrop, to test the correctness of the validity of the impugned Government Orders, which have been held to be valid by the learned single Judge.

19. In the first place, what strikes us is that the learned Judge did not have the advantage of taking into consideration the AICTE's norms and the stand taken thereupon. In fact, there can be no dispute that if we examine closer the norms fixed by the AICTE, it would be clear that those norms are totally contradictory to the norms fixed by the State Government. AICTE has contemplated two categories of students, as we have indicated above. There is no third category of students contemplated by AICTE, who are aspiring to apply for engineering seat. Where a candidate is seeking admission only on the basis of his performance in the qualifying examination, the norms are very clear that he must have secured a minimum aggregate of 60 per cent marks in Physics, Chemistry and Mathematics obtained in a single sitting in the 10+2 Examinations. To that extent, the norms of AICTE and the State Government are almost identical at least in respect of Open Category candidates. However, where a student seeks admission on the basis of his performance in the Common Entrance Test then, what is required is a 'mere pass' in the qualifying examination, i.e. Higher Secondary Examinations and such candidate need not have secured the minimum aggregate of 60 per cents marks in the said three subjects in 10+2 examinations and his scored in the entrance test alone would be relevant for the purpose of admission. The norms fixed by the State Government differ in this aspect from the norms fixed by the AICTE inasmuch as, according to the norms fixed by the State Government, if a student has appeared for the entrance test, TNPCEE'03 in this case, and desires to seek admission on the basis of his score in that entrance test, if he has scored less than the eligible marks in the Higher Secondary Examinations, he would not be able to seek the admission, even though he may be a topper in the entrance test. This position is all the more obtained because admittedly those students who were able to secure more than the minimum aggregate marks as contemplated in G.O. No.222 were not allowed to take part in the Single Window System of admission at all. Shri Rajsekar tried to justify this by saying that the score of a candidate in the TNPCEE alone was not taken into consideration in the Single Window System of admission but that score was

added to the standardized score in the Higher Secondary Examinations and it is only such combined score, which was considered for the purpose of admission and, therefore, the State Government was justified in providing for a higher marks in the Higher Secondary Examinations.

20. There is a clear error in this. As we have pointed earlier, there were only two categories of students contemplated by AICTE and even if the student's score in the entrance test was combined with his score in the Higher Secondary Examinations yet, such student do not cease to be belonging to the category of students who sought the admission on the basis of the marks scored in the entrance test. The fact remains in case of such students, the admission was not being sought on the basis of the marks secured in the qualifying examination alone. There may be a different way of adjudging a student and his score in the entrance test and in that there even may be a consideration of his marks scored in the Higher Secondary Examinations. However, even that exercise would not cease the said student from belonging to the second category of students, who sought the admission on the basis of their performance in the entrance test. Therefore, it is obvious that at least in so far as this particular aspect is concerned, the norms fixed by the State Government or the rules have gone contrary to the norms fixed by the AICTE. Now, it is an admitted position that all students who were desirous of having the admissions under the Single Window System had to appear for a common entrance test. If that is so, all those students would necessarily be in the second category and not in the first category. Even when they were in the second category, the State Government insisted on a particular score contrary to and contradictory with the norms of AICTE wherein they were required only a "mere pass" in the Higher Secondary Examinations. Thus, we find that there is a stark contradistinction in the norms fixed by the AICTE vis-□-vis the norms fixed by the State Government.

21. On this backdrop, let us see the law laid down by the Supreme Court in Adhiyaman case, cited supra, and more particularly, the observations in paragraph 41 thereof, which are extremely telling but, before that, we would choose to note the observations in paragraph 35. The Supreme Court noted that the field of Education in Technical and Scientific Institutions was occupied by the Central Government under Entry 66 of List I and being so, it would have a paramountacy over the State Law by virtue of First Part of Art.254. The Supreme Court observed even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid. The Supreme Court then repelled the contention that the power under Item 66 of List I was merely a power to co-ordinate and to determine standards i.e. it was a power merely to evaluate and fix standards of education. The Supreme Court gave a broad interpretation to Item 66 and went on to hold that the powers conferred by Item 66 in List I was not conditional merely upon the existence of a condition of disparity and was liable to be given full effect. The Supreme Court then made a reference to R. Chitralekha v. State of Mysore (AIR 1964 SC 1823) and noted the observations therein to the following effect:
"If the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the Central field, it may be struck down. But that is a question of fact to be

ascertained in each case."
The Supreme Court also took stock of the reported decisions in State of Andhra Pradesh v. Lavu Narendranath (1971 (1) SCC 607); Ambesh Kumar v. Principal, LLRM Medical College (1987 (1) SCR 661); and Osmania University Teachers' Association v. State of A.P. (1987 (4) SCC 671) and came to the conclusion ultimately that the expression "coordination used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. The Supreme Court went on to hold that it would also include a power to do all the things which are necessary to prevent what would make coordination either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention. The Supreme Court then further reiterated:
"(ii) To the extent that the State legislation is in conflict is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.
(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Art.254, the State legislation being repugnant to the Central legislation, the same would be inoperative.
(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.
(v) When there are more applicants than the available situation/ seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does no, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.
(vi) However, when the situation/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also, when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them although it satisfied the norms and requirements laid down by the Central Authority, the State authorities act illegally."

22. In our opinion, the learned counsel for the petitioners/ appellants were right in relying on these provisions particularly because we have already pointed out as to how the aforementioned Government Orders encroach upon the legislation made by the Centre. We have already pointed out that there is a definite repugnancy between the norms fixed by the AICTE and the Government Orders impugned herein. The observations in paragraph 5 and 6

speak volumes and apply on all fours to the present situation. We are at pains to point out that here is not a case where there are more applicants than the available seats so that the State Government could lay down higher standards or qualification than those laid down by the Central Government. We immediately hasten to add that in the present case, the standards were not higher but different and contradictory. Again, it is a clear case where the seats are available and the authorities are denying the students the same on the ground that the applicants were not qualified according to its standards and norms. In fact, the observation at paragraph (vi), cited supra, would completely clinch the issue. Unfortunately, this does not seem to have been brought to the notice of the learned single Judge.

23. It was tried to be pointed out then that there was undoubtedly a power in the State Government as found in T.M. Pai case, cited supra, to prescribe regulatory measures to ensure maintenance of proper academic standards atmosphere and infrastructure, etc. We do not think that this position can be disputed. However, the question, which has fallen for consideration in the present case, was not before the Supreme Court in the present form. A too general statement has been made in the impugned judgment in paragraph 10 to the following effect:

"An order laying down qualification for candidates to be eligible for being considered for selection for admission to a particular course, on the basis of merit specified by Regulation cannot be said to be in conflict with the Regulation of AICTE."

We are afraid that may not be the correct position in law for the reasons which we have already given above. Again, in our opinion, the reliance on paragraphs 53, 54, 55, 58, 65, 70 and 162-D by the learned single Judge is broader than necessary.

24. The ruling in Adhiyaman's case, cited supra, followed by the Supreme Court in another ruling, viz. JAYA GOKUL EDUCATIONAL TRUST v. COMMISSIONER & SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT (2000) 5 SCC 231 though, in a slightly different context. In this case, the question came about the interpretation of Sec.10(k) of the All India Council for Technical Education Act and alleged disparities between the provisions of the Central Act and the State legislation. In paragraph 22, the Supreme Court observed as under:

"As held in T.N. case the Central Act of 1987 and in particular, Section 10(k) occupied the field relating to 'grant of approvals' for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the 'views' of the State Government. That could not be characterised as requiring the 'approval' of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in T.N. case there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies,

including the State Governments and the universities concerned. ... No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N. Case it was held that the University could not impose any cond itions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. ..."

The above ruling of having come after the ruling in T.M. Pai case, cites supra, remains all the more important and reiterates the law of the Supreme Court holding in Adhiyaman case, cited supra, which alone is sufficient to invalidate the concerned Government Orders. This case was not cited before the learned single Judge and that would be one more reason why we find ourselves unable to agree with the judgment of the learned Judge.

25. In the result, therefore, the said Government Orders to the extent of their repugnance with the AICTE's regulations would have to be held as invalid and we hold them to be so. If the Government orders go on the ground of their repugnance, the necessary fall out is inevitable. In that case, the educational institutions would be able to admit the students who had taken the common entrance test, i.e TNPCEE'03 but had not secured the minimum aggregate of 60 per cent marks in Physics, Chemistry and Mathematics obtained in a single sitting in the Higher Secondary examinations, they would still be entitled to be admitted to the engineering course, of course, on the basis of their placement in the merit list, which could be prepared by combining their marks in the TNPCEE'03 and the marks scored in the Higher Secondary Examinations. But, that has not been done because, the students who had secured less than 60 percent marks in their higher secondary examinations were not permitted at all to take part in the Single Window System admission to the engineering colleges. That exercise will now have to be done by the State Government. In that only those students who had actually taken part in the TNPCEE'03 but were denied the opportunity to take part in the Single Window System Admission on account of that would be allowed to take part in the fresh exercise of Single Window System Admission, which we propose to direct.

26. Shri R. Krishnamurthy and Shri Prabhakaran, however, very earnestly urged that there were some students admitted by some of the engineering institutions on the basis of the examinations held by them. Learned counsel urged that merely because a student had not taken part in TNPCEE'03, would not by itself disentitle a student to be admitted to the engineering college and because he had taken part in the entrance test held by those engineering institutions. Learned counsel trace the power to hold such separate entrance tests in the judgment of T.M. Pai case, cited supra. They pointed out that in Pai case, cited supra, the unaided non-minority educational institutions were allowed to hold such entrance tests and decide upon the course to be undertaken in effecting the admissions to engineering courses. Both the learned counsel extensively took us through few paragraphs in T.M. Pai case, cited supra, and pointed out that the principle of governmental non-interference in the matter of management of the engineering institutions was upheld in that judgment. It was not only upheld but, it was rigourously reiterated by the Supreme Court, according to the learned counsel. There is absolutely no doubt about this. Seeing even the judgment in Islamic Academy of Education case, cited supra, the tone of the Supreme Court has always been in favour of the governmental non-interference in the management

of the unaided nonminority educational institutions as also the unaided, aided non-minority educational institutions.

27. However, Shri Vijay Narayanan, learned counsel appearing for AICTE, pointed out that in fact there was no possibility and no power on the part of these institutions to hold the separate entrance tests as they did and admitting the students on the basis of the marks secured in those entrance tests. Learned counsel points out that with the sole objective of complying with the directions of the Supreme Court in T.M. PAI case, cited supra, the AICTE, on 7th March, 2003, had issued Interim Policy Regulations. Under the same, the AICTE observed in respect of the admissions in the following terms:
"Admission:
The management of the technical institutions, minority and nonminority shall follow some identifiable or reasonable methodology of admitting students as held by Hon'ble Supreme Court. The Hon'ble Court also held that excellence in professional education would require greater emphasis on merit of students seeking admission and appropriate Regulations for this purpose may be made. For professional and technical colleges, the merit is usually determined by common entrance test conducted by Government agencies. In the matter of admissions into technical programmes the merit of the students shall be the criterion by holding entrance test in a fair manner.
Pursuant to the said Judgment, the Management of private unaided institutions would require to devise a mechanism of transparent admission process for admitting meritorious students under the management seats which can best be done by adopting the mechanism as may be prescribed by the concerned State Government in order to reduce the multiplicity of admission test in the interest of students and the society as a whole. It has accordingly been decided that in order to facilitate admissions into various private unaided institutions in the country, whether minority or non-minority, the AICTE approved institutions must necessarily join the Central or the State's Common Admission Test ensuring a transparent admission process.
All the seats including the seats reserved for the management must be filled up through Joint Entrance Test/Common Entrance Test conducted by Central/State Government or University followed by counselling as per present practice. However, the private unaided institutions may fill up the management seats by having their own counselling in an objective and transparent manner taking the students from same merit list prepared on the basis of Joint Entrance Test/Common Entrance Test of Central/State Government. ..."
Learned counsel, therefore, points out that it was not open atleast under the AICTE regulations to the Engineering colleges to hold their own entrance tests. Learned counsel points out that this was the decision of the AICTE on 7th March, 2003 whereas, admittedly, all the entrance tests (private entrance tests) were held by the Engineering colleges much later than that.

28. In this view of the matter, it will not be possible to accept the contention raised by the learned senior counsel that even those students, who did not appear the Common Entrance Test (TNPCEE'03) but appeared for the private entrance tests conducted by the Engineering colleges, could be admitted to the engineering colleges on the basis of their performance in such private entrance test. We, therefore, reject this argument.

29. Learned counsel were at pains to point out that these guidelines or regulations, as the case may be, could run counter to some of the observations of the Supreme Court in T.M. Pai case, cited supra. We need not go into that aspect because, admittedly, the writ petitions were filed challenging these fresh regulations or as the case may be, Interim Policy Regulations dated 7th March, 2003, and those writ petitions were ordered to be transferred to the Supreme Court, to be tagged along with the writ petition file d on behalf of Islamic Academy of Education. We are told that those petitions are still pending after they were ordered to be disposed of in the judgment passed in Islamic Academy of Education case, cited supra. We, therefore, desist from expressing any opinion. However, the fact remains that those Interim Policy Regulations not having been stayed by any other Court, we all the same binding on the Engineering colleges and, therefore, the institutions could not have the choice to hold their own entrance tests for admitting the students disregarding the TNPCEE'03 conducted by the State of Tamil Nadu.

30. Reliance was sought to be made on a communication dated 30th July 2003 of Anna University wherein it was suggested that the norms prescribed during the admissions were as follows:
"Admissions are purely based on TNPCEE 2003 or a separate examination conducted by the institution itself (only one system is to be followed) ..."
Learned counsel urged that it was in pursuance of this that the separate entrance tests were held by the engineering colleges. We are afraid we cannot go into that question now in view of our finding that AICTE interim policy regulations were already in the field and to that extent no repugnant legislation or an executive order could be made either by the State Government or by the University strictly in terms of the law laid down in Adhiyaman case, cited supra, followed in Jaya Gokul Educational Trust case, cited supra.

31. We are also not impressed by the contention for one more reason that the common entrance test of the State Government, TNPCEE'03 was held in the month of April 2003 when the results of the Higher Secondary Examinations were not declared at all. Therefore, those students who were really desirous of joining the engineering course would certainly appear in that entrance test hoping the better results on their part in the Higher Secondary Examinations. If a student did not compete in that entrance test, the very bona fides of his desire to pursue Engineering course goes into clouds. This is another reason for us not to consider the students who had not appeared for TNPCEE'03.

32. With the result, the writ petitions challenging the constitutionality of the aforementioned Government Orders and the related writ appeals would succeed to the extent that we have indicated.

33. Learned counsel appearing on behalf of the Anna University and the learned Special Government Pleader point out that a fresh exercise will have to be taken to locate the students who have actually taken part in the common entrance test, i.e. TNPCEE'03 but were not allowed to take part in the Single Window System admission because they had secured less than the minimum aggregated marks as provided by the aforesaid Government Orders.

We will have to, therefore, issue some directions as much time has now been lost for even the students who were desirous to join the engineering course and pursue the same. We hereby issue the following directions:
1.The admissions of those students who had appeared for the TNPCEE'03 but had not secured the prescribed minimum aggregate marks in their Higher Secondary Examinations would be regularised.
2.No action need be taken against those Engineering colleges for having breached the norms of the State Government and no proceedings of disaffiliation need be started against them on that count alone. The State Government shall, within three weeks from today, with notices to all the Engineering colleges in the State, start the process of locating the students by giving such students an opportunity to vie for the seats in the Engineering colleges. If any of such students have already been admitted, as we have stated earlier, their admissions shall be regularised. However, we make it clear that all the students who are going to be benefited by this judgment must have appeared for the TNPCEE'03 held by the State Government.
3.Since the learned counsel appearing for the Anna University pointed out that admissions at this late juncture are likely to affect the University attendance regulations, we also direct that the shortage in the attendance of such students shall be compensated by holding special classes on Saturdays, Sundays and other holidays. Learned counsel appearing on behalf of the Engineering institutions have undertaken that teaching staff who are engaged for holding such special classes shall be paid extra and that no amount shall be collected by the institutions from the students.
4.The writ petitions filed by the individual students shall stand allowed only if such students have taken part in the common entrance test TNPCEE'03.
5.We make it clear that all these directions apply only for the academic year 2003-04.

34. With this, we close the debate and the judgment.
Connected miscellaneous petitions are closed.

35. We record our appreciation for the deep and studious arguments by the learned senior counsel and the other learned counsel on behalf of the Engineering institutions as also the learned Special Government Pleader.

Index:Yes
Website:Yes

Jai

To:

1. The Secretary to Government
Higher Secondary Education
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Chennai 600 009

2. The Secretary

Tamil Nadu Engineering Admissions 2003
Anna University
Chennai 600 025

3. The Director of Technical Education
Guindy, Chennai 600 025

4. The Registrar
Anna University
Chennai 600 025

5. The Chairman
The All India Council for Technical Education,
Indira Gandhi Sports Complex
New Delhi 110 002

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